



COMPETITION WATCH



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Commonwealth Competition Council Members

Gubernatorial appointments

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Richard D. Brown
Roy Page
Michael N. Pocalyko
The Rev. Dr. S. Strother Smith, III
Vacancy
Vacancy

Senate Privileges and Elections Committee appointments

Senator Emmett W. Hanger, Jr.,
elected Chairman
Senator John C. Watkins

Members of the Small Business Commission

Robert A. Archer
Bernice E. Travers

Speaker of the House of Delegates appointments

Delegate Allen L. Louderback
Delegate Thomas D. Rust
Edgardo Marquez
David M. Zobel

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Congress opens the door when the 105th Congress passed Public Law 105-178 known as TEA-21 - Transportation Equity Act for the 21st Century

Among the act's many programs, it creates a pilot program under which a State may collect tolls on an Interstate highway for the purpose of reconstructing or rehabilitating an Interstate highway that could not otherwise be adequately maintained or functionally improved without the collection of tolls.

A maximum of three Interstate facilities may be included in the pilot program, and they must be in different States. The eligibility criteria for the pilots include:

- age, condition and intensity of use of the existing Interstate facility
- an assurance that the MPO has been consulted concerning placement of toll on any facility affecting a metropolitan area

NOTE: Federal highway and transit statutes require, as a condition for spending federal highway or transit funds in urbanized areas, the designation of "[metropolitan planning organizations \(MPOs\)](#)" which have responsibility for planning, programming and coordination of federal highway and transit investments.

- an analysis demonstrating that the Interstate facility cannot be maintained or improved from current and future funding to be received under TEA-21 or from other sources without toll revenues
- a facility management plan covering imposition of tolls, a financial plan, and other appropriate information.

An agreement between the State and the Federal Highway Administration covering use of toll revenues must be executed for each Interstate toll pilot project. During the term of the toll pilot,

Interstate Maintenance funds cannot be used on the portion of the Interstate route where tolls are being collected. The term of the toll pilot shall not be less than 10 years.

As reported in the April 2002 issue of COMPETITION WATCH, **Virginia** and Michigan are considering proposals under the TEA -21 pilot program to provide new highway capacity exclusively for trucks:

- 1st** would add truck lanes to I-81 across Virginia
- 2nd** would add a new border crossing between Detroit and Windsor, Ontario

Although both would be paid by tolls, neither has drawn major opposition thus far, perhaps because both would involve new capacity unlikely to exist otherwise.

In Virginia, a 25-company consortium headed by Koch Performance Roads submitted a proposal to VDOT to add four exclusive truck lanes to the entire 325 miles of I-81, a major truck route spanning the state. The existing two lanes in each direction would become the truck lanes, while the outer lanes in each direction would be added for cars. The two types of lanes would be separated by rumble strips, and the truck lanes would have separate entrance and exit ramps.

I-81 is often congested and is known for its accidents, many of them involving big rigs, which account for up to 40 percent of the traffic on the winding and sometimes mountainous route.

Public Concept	Private Proposal
VDOT reportedly has been working on plans to add a single lane in each direction, at a cost of \$3.4 billion. Its plans would take up to 30 years to complete over the entire 325 miles of I-81.	The private proposal would add twice as much capacity in just over 15 years.

The Detroit-Windsor project involves converting little-used rail tunnels under the Detroit River into truck-only toll tunnels. It is being proposed by Borealis Infrastructure, the development arm of the Ontario Municipal Employee Retirement System with an estimated cost of \$350 million.

The rest of the story in Virginia...

What is different about this effort at a public-private transportation partnership is that the VDOT is now asking for what it wants in the I-81 project. Nationally, no state has attempted a public-private partnership project of such broad scope. According to the Director of VDOT, Phillip A. Shucet:

"It's important to me that VDOT send a clear signal that we expect to see clear and meaningful risk brought to the table...risk they don't the Commonwealth to guarantee. That risk could be in financing, or in scheduling, or in guarantees of the quality of materials, for example."

In August this type of thinking resulted in the Department of Transportation returning five unsolicited proposals to do road work around the state, including a private proposal by a consortium of construction companies to build truck lanes on I-81 and pay for some of the multibillion-dollar work by charging trucker tolls. This is the project discussed in the story's lead section.

A-76 Commercial Activities Panel

Summary: A Commercial Activities Panel was required by Section 832 of the fiscal year 2001 National Defense Authorization Act (Public Law 106-398). Their charge was to study the transfer of commercial activities currently performed by government employees to contractors.

A final report "Improving the Sourcing Decisions of the Government" was issued April 30, 2002. It is available at

<http://www.gao.gov/a76panel/dcap0201.pdf>

The panel recommended that the government adopt a procedure based on the Federal Acquisition Regulation (FAR) Part 15, Contracting by Negotiation, to improve the OMB Circular A-76 sourcing decisions of government.



The rest of the story ...

The ongoing discussion concerning the effectiveness of the A-76 program resulted in Section 832 of the Fiscal Year 2001 National Defense Authorization Act (Public Law 106-398) which required the Comptroller General of the United States to convene a panel of experts. Their task was to study the policies and procedures governing the transfer of commercial activities from government personnel to a federal contractor under the provisions of OMB Circular A-76. Section 832 required the Comptroller General to submit the results of the study, to include recommended changes to the A-76 program. The 12-member panel's final report unanimously adopted the following ten guiding principles as the basis for all sourcing decisions:

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**Guiding
Principles
as basis for
all Federal
sourcing
decisions**

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently governmental and certain other functions should be performed by federal workers.
4. Create incentives and processes to foster high-performing, efficient and effective organizations throughout the federal government.
5. Be based on a clear, transparent, and consistently applied process.
6. Avoid arbitrary full-time equivalent (FTE) or other arbitrary numerical goals.
7. Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.
8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.

9. Ensure that competitions involve a process that considers both quality and cost factors.

10. Provide for accountability in connection with all sourcing decisions.

The panel was split 8 votes (government and private industry representatives) - 4 votes (academia representatives) on three other recommendations. These three recommendations are:

- **Integrated Competition Process:** "...The Panel believes that all parties -- taxpayers, agencies, employees, and contractors -- would be better served by conducting public-private competitions under the framework of the Federal Acquisition Regulation...The process should incorporate appropriate elements of the current A-76 process. In essence, a public-sector proposal...could be submitted in response to a broad range of agency solicitations, including in appropriate cases work currently contracted out and new work, and have the proposal evaluated under the same rules that apply to proposals from private-sector offerors...This and perhaps other aspects of the integrated competition process would require changes to current law or regulations, and the Panel urges the Congress and the administration to begin work immediately toward that end..."
- **Limited Changes to OMB Circular A-76:** "Development of an integrated FAR-type process will require some time to be implemented. In the meantime, the Panel expects current A-76 activities to continue, and therefore believes some modifications to the existing process can and should be made. Accordingly, the Panel recommends a number of limited changes to OMB Circular A-76. These changes would, among other things, strengthen conflict of interest rules, improve auditing and cost accounting, and provide for binding performance agreements."
- **High-Performing Organizations:** "...The Panel recommends that the Administration develop a process to be used to select a limited number of functions currently performed by federal employees to become HPOs [high-performing organizations], and then evaluate their performance. As to those functions, authorized HPOs would be exempt from competitive sourcing studies for a designated period of time...Successful implementation of the HPO concept will require a high degree of cooperation between labor and management, as well as a firm commitment by agencies to provide sufficient resources for training and technical assistance. In addition, a portion of any savings realized by the HPO should be available to reinvest in continuing reengineering efforts and for the HPO to use for further training and/or for incentive purposes ..."

While many of the panel's recommendations can be accomplished administratively under existing law, the panel recognizes that some of its recommendations would require changes to statutes and regulations, and this could take some time. Therefore, the panel is recommending that the following phased implementation strategy be implemented:

**Panel recommends
three phase
implementation
strategy**

- A-76 studies underway or initiated in the near future should continue under the current framework.

- OMB should develop and oversee the implementation of the FAR-type, integrated competition process. To expedite the process, OMB may want to limit the new process initially to agencies where its use would not require legislation. (For example, the Department of Defense is subject to statutory provisions that do not apply to civilian agencies.) The panel recommends that "the integrated competition process be used in a variety of agencies and in meaningful numbers across a broad range of activities, including those currently performed by federal employees, work currently performed by contractors, and new work."

- Within one year of initial implementation of the new process, and one year after that, OMB should submit a detailed report to Congress identifying the costs of implementing the new process, any savings

expected to be achieved, expected gains in efficiency or effectiveness of agency programs, the effect on affected federal employees, any

lessons learned, and any recommendations for appropriate legislation. In addition, the GAO should provide its own assessment to Congress. Congress would then be in a position to determine the need for any additional legislation.

The Office of Management and Budget is expected to release revised OMB Circular A-76 revised procedures early in 2003 based on the recommendations of the Panel.

The Commonwealth Competition Council notes that the points discussed above can be used in whole or part by any organization interested in restructuring their operations. Any organization desiring assistance is such a project should contact the Council at the (804) 786-0240 or at their web site at <http://www.egovcompetition.com>.

Commonwealth Competition Council Project Priorities for 2002-2003

The Commonwealth Competition Council has voted on its top project priorities for the current fiscal year. The following top eight projects were selected as this year's priorities and staff work has begun in the development of work plans:

PROJECT IDENTIFICATION

1. Program to cause agencies to "self-review" for privatization (competitive government)
2. Facilities management (grounds maintenance)
3. Review building and construction inspection processes ^a
4. Virginia energy acquisition and savings services (centralized)^b
5. Smaller engines
6. Electronic creation of records and archiving
7. Medicaid drug formulary^c
8. Eliminate college and university police forces

^{a, b, c} Initiatives already underway involving a) General Services, Higher Education Summit & Governor's Commission on Efficiency and Effectiveness; b) Mines, Minerals & Energy; and c) Office of the Secretary of Health & Human Services. So as to not duplicate effort, the Council will offer assistance in these areas as requested and concentrate its efforts on the other approved projects.

PROJECTS IN PROGRESS

- Performance contracts for energy
- Next level "Compete"
- Commonwealth financial services (debt collection)
- Commonwealth unpaid revenues (part of debt collection above)

- Maintenance service contracting
- Beyond "the Authorities" study
- Telecommunications audit

PROJECTS COMPLETED

- Unsolicited proposals
- Extension of not-for-profit study

- Geographic information systems
- Enhancing value of certification of small & minority business
- Central Review panel to analyze suggestions for improved government operations incentive based suggestion)
- Review potential savings for child support enforcement system

“Retooling Government for Results” Fall Conference cancelled for this fiscal year

The Commonwealth Competition Council has cancelled the three day fall conference planned by the Council for 300-400 state and local officials in November. The conference was being planned to showcase best practices and benchmarking for local and state governments with guest speakers coming from around the country. While the conference topics are timely, the Council decided on this action in light of the financial crisis facing the Commonwealth. The Council did leave open the possibility of other actions this year within budget or a three day conference in 2004.

Please continue to contact the Commonwealth Competition Council with your ideas and suggestions to improve government. Your views and input are always welcome. The Council has a wide range of tools in the eGOV toolkit to assist you and your organization in the quest for continuous improvement.

Senator Emmett W. Hanger, Jr.
Chairman, Commonwealth Competition Council

The Commonwealth Competition Council web portal provides 24-hour support, 7 days a week, to individuals interested in entrepreneurial government and continuous improvement in their organizations. An e-GOVentrepreneur's toolkit is available to answer your questions and to provide assistance.

<http://www.egovcompetition.com>

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